REMARKS

Applicants thank the Examiner, Ms. Katherine L. Fernandez, for the courtesies extended to applicants' representative during the Telephonic Interview conducted on October 5, 2010, and for her assistance in furthering prosecution on the merits of the instant application. During the Telephonic Interview, the subject matter of independent claims 39 and 67 was discussed. An agreement was reached with respect to amendments that would overcome the rejection under 35 U.S.C. §102 and §103 in view of U.S. Patent No. 5,447,102 ("*Kaminski*"). No agreement with respect to patentability of the claims was reached. The following amendments and remarks take into account the content of the Telephonic Interview.

Claims 39, 45-49, 52-54, 57-62, 64-75, and 77-78 are pending in this application, with claims 39 and 67 being the only independent claims. Claims 39 and 67 have been amended. No new matter has been added. Reconsideration of the above-identified application, as herein amended and in view of the following remarks, is respectfully requested.

Claims 39, 49 and 65 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,640,957 ("*Kaminski*").

Claims 52-54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski*, and further in view of U.S. Pat. No. 6,348,694 ("*Gersthteyn*"). Claim 61 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski*, and further in view of U.S. Pub. No. 2002/0052562 ("*Lipman*"). Claim 66 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski*, and further in view of U.S. Pat. No. 4,882,598 ("*Wulf*"). Claims 77, 45, 46 and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski*. Claim 47 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski*, and further in view of U.S. Pat. No. 6,529,543 ("*Anderson*"). Claim 55, 57-59 and 64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski* in view of *Gershteyn*, and further in view of

U.S. Pat. No. 5,807,261 ("*Benaron*"). Claim 60 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski* in view of *Gershteyn*, and further in view of U.S. Pat. No. 6,736,832 ("*Lenderink*"). Claims 67-68, 70-74 and 78 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski* in view of "Genetic Analysis of Ultraviolet Radition-induced Skin Hyperplasia and neoplasia in a Laboratory Marsupai Model (Monodelphis Domestica)", 1994 ("*VandeBerg*"). Claim 69 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski* in view of *VandeBerg*, and further in view of U.S. Patent No. 4,843,279 ("*Rattray*"). Claim 75 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Kaminski* in view of *VandeBerg*, and further in view of U.S. Pub. No. 2002/0183811 ("*Irwin*"). For the following reasons, reconsideration and withdrawal of this rejection are in order.

Independent Claim 39

Independent claim 1 has been amended to recite, *inter alia*, "an evaluation unit coupled to the UV emitter and the UV sensor for determining UV radiation absorption of the human skin based on the UV radiation emitted by the UV emitter and penetrating into the skin of a test subject at a wavelength between 345 nm and 355 nm and the diffusely reflected UV radiation received by the UV sensor to provide the allowable UV exposure time or allowable UV radiation dose for the human skin". The cited art fails to teach or suggest this limitation.

The Examiner (at pg. 2 of the Office Action) asserts that:

> Kaminski et al. discloses ... an evaluation unit coupled to the UV emitter and the UV sensor for determining UV radiation absorption of the skin based on the UV radiation emitted by the UV emitter and penetrating into the skin of a test subject at a wavelength between 345 nm and 355 nm and the diffusely reflected UV radiation received by the UV sensor (column 6, lines 12-47, column 3, line 66-column 4, line 18; column 3, lines 20-64).

Applicants disagree that *Kaminski* teaches the evaluation unit of now-amended independent claim 39. The Examiner-cited portion of *Kaminski* discloses in col. 3, lines 66 - col. 4, line 18 that the diffusely reflected light is used to determine the effectiveness of the sunscreen. However, there is no teaching or suggestion whatsoever in *Kaminski* of an evaluation unit that provides the allowable UV exposure time or allowable UV radiation dose for human skin, as recited in now-amended independent claim 39. Independent claim 39 is therefore patentable over *Kaminski*.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §102 is therefore requested, and notice to that effect is earnestly solicited.

Independent Claim 67

Independent claim 67 has been amended to recite, *inter alia*, the step of "assigning a UV radiation threshold value of the human skin based on the determination of UV radiation absorption of the human skin to provide an allowable UV exposure time or allowable UV radiation dose for the human skin". The combination of *Kaminski* and *VandeBerg* fails to disclose the above limitations.

The combination of *Kaminski* and *VandeBerg* fails to disclose the above limitation. *Kaminski* discloses a method for determining the effectiveness and protection rating of a sunscreen. Pursuant to achieving the disclosed method, *Kaminski* explains that physiological data is gathered by scanning both a treated area and an untreated area of the skin of a subject to determine sun protection factors (see, e.g., col. 4, lines 58-65 of *Kaminski*). This determination has nothing to do with determining a threshold value of UV radiation of human skin to provide an allowable UV exposure time or allowable UV radiation dose for the human skin, as recited in now amended independent claim 67. Rather, *Kaminski* merely determines the effectiveness of a

sunscreen, i.e., determines an SPF or sun protection factor for a sunscreen (see col. 5, lines 2-6 of Kaminski). *Kaminski* fails to teach or suggest "assigning a UV radiation threshold value of the human skin based on the determination of UV radiation absorption of the human skin to provide an allowable UV exposure time or allowable UV radiation dose for the human skin", as expressly recited in now-amended independent claim 67.

VandeBerg fails to cure the deficiency of *Kaminski*. *VandeBerg* discloses an analysis of ultraviolet radiation-induced skin hyperplasia and neoplasia. According to *VandeBerg*, subjects (laboratory marsupials) were repeatedly exposed to UV radiation and the skin was visually evaluated for lesions. Accordingly, *VandeBerg* fails to teach or suggest anything whatsoever of UV radiation thresholds based on the determination of UV radiation absorption of human skin. *VandeBerg* likewise thus fails to teach or suggest the step of "assigning a UV radiation threshold value of the human skin based on the determination of UV radiation absorption of the human skin to provide an allowable UV exposure time or allowable UV radiation dose for the human skin", as expressly recited in now-amended independent claim 67. Accordingly, the combination of *Kaminski* and *VandeBerg* fails to teach or suggest the method of now-amended independent claim 67, because *VandeBerg* fails to provide that which *Kaminski* lacks.

Independent claim 67 is therefore not rendered obvious and unpatentable by the combination of *Kaminski* and *VandeBerg*.

The combination of *Kaminski*, *VandeBerg*, *Gersthteyn*, *Lipman*, *Wulf*, *Anderson*, *Benaron*, *Lenderink*, *Rattray* and/or *Irwin* fails to provide any reason whatsoever to provide the evaluation unit of independent claim 39, or the assigning step of independent claim 67, absent an impermissible hindsight construction based on applicants' instant disclosure.

Gersthteyn relates to "methods and apparatus for determining an ability of a region of skin to withstand exposure to harmful radiation" (see col. 3, lines 61-63). *Lipman* relates to a

"Comprehensive Pain Assessment System of the present invention includes a non-contact heat beam dolorimeter and methods for objective pain tolerance assessment" (see paragraph [0029]). *Wulf* relates to "a method ... [for determining] ... an individual's ability to stand exposure to ultraviolet radiation prior to causing a skin reaction, such as skin cancer or erythema, or to determine an individual's ability to become tanned by exposure to ultraviolet radiation" (see col. 1, lines 55-59). *Anderson* relates to "systems and tools for controlling the optical penetration depth of laser energy, e.g., when delivering laser energy to target tissue in a patient" (see col. 1, lines 48-50). *Benaron* relates to "surgical tools and instruments capable of non-destructive interrogation of body tissues during surgical and/or diagnostic procedures" (see col. 1, lines 26-29). *Lenderink* relates to "a measuring device 1 capable of carrying out a non-invasive measurement 2 on skin 3, correlated to the MED" (minimum erythema dose) (see col. 3, lines 61-63). *Rattray* relates to "an improved suntanning fluorescent lamp which generates both UVA and UVB radiation" (see col. 2, lines 10-12). *Irwin* relates to "an apparatus for treating diseased skin with ultraviolet (UV) light" (see paragraph [0009]).

Gersthteyn, *Lipman*, *Wulf*, *Anderson*, *Benaron*, *Lenderink*, *Rattray* and/or *Irwin*, however, fail to teach or suggest anything of the evaluation unit of independent claim 39 and the assigning step of independent claim 67. Accordingly, the combination of *Kaminski*, *VandeBerg*, *Gersthteyn*, *Lipman*, *Wulf*, *Anderson*, *Benaron*, *Lenderink*, *Rattray* and *Irwin* fails to achieve the expressly-recited subject matter of independent claims 39 and 67, because *Gersthteyn*, *Lipman*, *Wulf*, *Anderson*, *Benaron*, *Lenderink*, *Rattray* and *Irwin* fail to provide what *Kaminski* and *VandeBerg* lack. Independent claims 39 and 67 are therefore not rendered obvious and unpatentable by the combination of *Kaminski*, *VandeBerg*, *Gersthteyn*, *Lipman*, *Wulf*, *Anderson*, *Benaron*, *Lenderink*, *Rattray* and *Irwin*.

In view of the foregoing, the reconsideration and withdrawal of all the rejection under 35 U.S.C. §103 is requested, and notice to that effect is earnestly solicited.

In view of the patentability of independent claims 39 and 67, dependent claims 45-49, 52-54, 57-62, 64-66, 68-75 and 77-78 are also patentable over the prior art for the reasons set forth above, as well as for the additional recitations contained therein.

Based on the foregoing amendments and remarks, this application is in condition for allowance. Early passage of this case to issue is respectfully requested.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

Respectfully submitted,
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